

Cannabis Control Commission gives final approval to Marijuana delivery framework in Massachusetts

By Colin A. Young
State House News Service

With the threat of legal challenges looming, state regulators gave final approval Monday morning to new regulations that will reshape the legal marijuana industry to include home delivery businesses initially available only to social equity program participants and economic empowerment applicants.

The suite of new industry rules creates a two-pronged delivery license framework that is expected to become a reality in 2021 but also includes changes to the medical marijuana caregiver program and provisions that Cannabis Control Commission regulators said will be crucial to preventing monopolization of the new delivery sector.

“I am thrilled. It was a huge step today in passing regulations in general; they are very consumer-oriented and patient-oriented and I think they represent a focus on what the people of Massachusetts want,” Commissioner Shaleen Title said. “Delivery, in particular, I think represents a huge step forward for equity but it is not a cure-all in any way and, in fact, I think the work starts right now this afternoon in terms of making sure we are providing education and resources and guidance to municipalities, in particular, and prospective applicants.”

The new adult-use marijuana regulations, which include the new delivery framework were adopted 3-1, with Commissioner Jennifer Flanagan casting the vote of opposition. The medical

marijuana regulations and those for co-located recreational and medical facilities were adopted unanimously.

The CCC's delivery policy will create two delivery license types: a "marijuana delivery operator" that can buy products wholesale from growers and manufacturers and sell them to their own customers, and a "marijuana courier" that can charge a fee to make deliveries from CCC-licensed retailers and dispensaries. Applications for the courier model have been available for months and the CCC expects to open the application process for the delivery operator license class by the end of January.

Home delivery of marijuana has long been allowed under the state's medical marijuana program, and the CCC has been thinking about a non-medical delivery framework for about three years. During that time, advocates have argued that delivery-only licenses will help level the playing field between large corporations and small businesses because the barriers to entry for delivery are typically far less burdensome than those for retail licenses.

But as the vote to make non-medical marijuana home delivery a reality approached, some existing marijuana retailers have threatened to sue the CCC if it adopts and implements its new delivery policy.

"Since 2018, the [Commonwealth Dispensary Association] has consistently worked with the CCC to create a more equitable, profitable delivery model that could support our shared goals of creating opportunity for minority-owned entrepreneurs. However, the CCC has seemingly pushed these thoughtful deliberations to the side to pursue misguided online retailer policies that will only serve to cannibalize the legal industry by large, corporate interests at the expense of our small businesses, communities and Main Streets," the Commonwealth Dispensary Association, which represents about 80 percent of existing retailers, said after the CCC's vote

Monday.

The retailer organization added, "While the CDA is disappointed by today's outcome, this will not be the final word on delivery. The very real concerns of introducing online retailers should be heard and addressed. To that end, we are prepared to contest the matter to ensure that policy continues to adhere to the statute and that the market is not upended."

CCC Chairman Steven Hoffman has previously said the agency is confident that establishing a delivery structure is well within its authority, and on Monday downplayed the possibility that legal challenges could ensnare the CCC's latest policy accomplishment.

"That's certainly their prerogative to do so. We made what we thought was the right decision, one that we stand by," Hoffman told reporters about the threats from retailers to sue after the CCC's vote. "We're fully prepared to defend ourselves if that happens, but that is certainly outside of my control and outside of the commission's control."

Title pointed out that the CCC's delivery policy was opposed by some existing retailers but supported by others represented by the Cannabis Business Association. Some state lawmakers challenged the CCC's authority to adopt the regulations, but others supported the step, she said. And while the Massachusetts Municipal Association opposed the adoption of the new rules, Title said other municipal officials registered their support for the idea.

"If you don't want a market to change, I think the cannabis business may not be the right business for you. Because this is absolutely an industry that is going to change, there's a lot of room for innovation, there's a lot of room for new licenses," Title said. "Today, with the delivery structure that we passed, there's a lot of opportunities to collaborate with economic empowerment and equity businesses ... and create

an experience that marijuana consumers want. So I think businesses that do that will be successful.”

To the delivery advocates who pressed for the ability to buy products from wholesalers to resell, the opposition from retailers is seen as an attempt to squash competition.

“Essentially, they want to own 100 percent of it or 80 percent or have as much control or influence over it as possible,” Aaron Goines, an activist who advises the Massachusetts Cannabis Association for Delivery and has been involved in shaping the delivery framework, said Monday during a pre-meeting panel hosted by The Young Jurks. “That’s just not how the regulations are written, so get on board. Compete. You are not entitled to a clear runway of no competition in this country, it just doesn’t work like that.”

The vote Monday to conclude the CCC’s third regulatory rewrite in as many years also marked a turning point for the commission. Monday’s meeting was the last for Commissioner Britte McBride, who announced in August that she planned to leave the CCC once the latest regulations were finalized despite having almost a year remaining on her initial appointment.

Attorney General Maura Healey appointed McBride to the CCC in 2017 to fill the commission’s required public safety seat and her departure combined with the May exit of former commissioner Kay Doyle leaves the CCC shorthanded. Title’s initial appointment was due to expire Sept. 1, but she remains on the CCC as a hold-over and could be reappointed. Hoffman’s term as chairman extends until Sept. 1, 2022, and Flanagan’s initial appointment is valid until Sept. 1, 2021.

Doyle’s seat is to be filled by a majority vote of Gov. Charlie Baker, Attorney General Maura Healey and Treasurer Deborah Goldberg and the pick must be someone who has experience in oversight or management of commodities,

production or distribution in a regulated industry. Healey alone must select someone to fill the commission's public safety seat that McBride is vacating.

"First of all, I completely understand that there is a lot going on the world and the appointing authorities have an awful lot on their plate," Hoffman said Monday, adding that the CCC needs three commissioners to have a quorum and will complete its work "regardless of how many commissioners we have, as long as we have three."

He added, "I would prefer to have five commissioners, there's no question whatsoever about it. But we will get our work done with three and I am very hopeful that the appointing authorities are moving as quickly as they can to find replacements for us and I really think it's important that we get back to five commissioners so I beseech them to help us in that respect."